V & J Cleaners Co. *and* Local 25, Service Employees International Union, AFL–CIO. Case 13–CA–27139

February 28, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND RAUDABAUGH

Upon a charge filed on August 19, 1987 by Local 25 of the Service Employees International Union, AFL–CIO (the Union), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint against V & J Cleaners Co. (the Respondent), alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Copies of the charge and the complaint and notice of hearing were duly served on the parties, and the Respondent filed an answer on October 26, 1987.

On January 5, 1988, the parties entered into a settlement agreement, approved by the Regional Director, that, inter alia, provided for certain backpay payments to be made by Respondent. This settlement agreement included the following ''Attachment B'':

> It is further agreed that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to, failure to make timely installment payment of monies as set forth in the Settlement Agreement, on motion for summary judment [sic] by the General Counsel, the Answer of the Charged Party shall be considered withdrawn and, thereupon the Board may, without necessity of trial or resumed trial find all allegations of the Complaint [to] be true and make findings of fact and conclusions of law consistent with those allegations, adverse to the Charged Party on all issues raised by the pleadings, and issue an Order providing full remedy for the violations so found as is customary to remedy such violations, not limited to provisions of this Settlement Agreement. The parties further agree that a Board Order and a United States Court of Appeals judgment may be entered hereon ex parte.

On December 4, 1990, the General Counsel filed a Motion for Order Transferring Proceedings to the National Labor Relations Board and for Summary Judgment for failure to make payments due under the settlement agreement. On December 10, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion therefore are undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Although the Respondent filed an original answer to the complaint, the undisputed allegations in the Motion for Summary Judgment disclose that:

(1) the Respondent on January 5, 1988 entered into a settlement agreement to make installment payments of back wages by March 9, 1988;

(2) the settlement agreement provides that ''in case of non-compliance . . . on motion for summary judgment by the General Counsel, the Answer of the Charged Party shall be considered withdrawn'' and the case shall be treated as if no such answer were filed, authorizing the Board to ''find all allegations of the Complaint [to] be true'';

(3) the Respondent failed to make any such payments; and

(4) the field examiner for Region 13, by letters dated March 14, 1989, and March 15, 1989, requested that the Respondent take immediate steps to timely comply with the terms of the settlement agreement and pay the moneys due under the agreement.[1]

The Respondent has failed to make payments in accordance with the settlement agreement and, pursuant to the agreement's default clause, the Respondent's answer is considered to be withdrawn. In the absence of an answer to the complaint, and the Respondent having failed to show cause why the Motion for Summary Judgment should not be granted, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent, a corporation engaged in the retail business of providing drycleaning services, has maintained a plant and offices at 1946 East 79th Street, Chicago, Illinois, and since March 1987 has operated retail outlets at the Lake Meadows housing complex. During the year preceding issuance of the complaint, or based on a projection of Respond-

[1] The March 15 letter specifically mentioned the settlement agreement's default clause (i.e., Appendix B) and stated that appropriate action would be taken if the Respondent did not contact the field examiner to discuss the matter.

ent's operations from March through September 1987, the Respondent has derived gross revenues in excess of $500,000 annually in the course and conduct of its business operations described above. During the year preceding issuance of the complaint, Respondent, in the course and conduct of its business operations described above, purchased and received at its Chicago facility products, goods, and materials valued in excess of $5000 directly from points outside the State of Illinois.[2]

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

In late June 1987, the Respondent interrogated an employee concerning her involvement in activities for the Union, and on or about July 2, 1987, the Respondent discharged Mary Williams and Veneta Allen. At all times thereafter, the Respondent has failed and refused to reinstate these employees. The Respondent discharged and refused to reinstate Williams and Allen because they joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other activities for the purpose of collective bargaining or other mutual aid or protection.

We find that by such acts and conduct, the Respondent violated Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. By interrogating an employee concerning her involvement in union activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By discharging employees because they engaged in activities on behalf of Local 25, Service Employees International Union, AFL–CIO, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The notice to employees that was to be posted pursuant to the settlement agreement indicates that discriminatees Mary Williams and Veneta Allen waived their rights to reinstatement and that the Respondent agreed to pay them sums specified in the settlement agreement in accordance with its terms. In view of the Respondent's failure to honor that agreement, we shall disregard the waivers and issue an order that provides the full remedy customarily directed in cases involving discriminatory discharges.[3] Accordingly, we shall order that the Respondent offer Williams and Allen reinstatement and make them whole, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), for any loss of earnings suffered as a result of the discrimination against them, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[4] We shall also order the Respondent to remove from its files any reference to the unlawful discharge and to notify Williams and Allen that it has done so. The record indicates that the Respondent initiated bankruptcy proceedings and therefore may no longer be in business. To effectuate the policies of the Act, we shall order the Respondent, if it has ceased operating at its Chicago location, to mail duly executed copies of the notice to all employees employed on and after the dates the unfair labor practices found here were committed.[5]

ORDER

The National Labor Relations Board orders that the Respondent, V & J Cleaners Co., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their involvement in union activities.

(b) Discharging employees because they engage in union activities on behalf of Local 25, Service Employees International Union, AFL–CIO, or any other labor organization, or because of their protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Mary Williams and Veneta Allen immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits

[2] The Respondent's $500,000 gross volume meets the Board's discretionary jurisdictional retail standard. See *Carolina Supplies & Cement Co.*, 122 NLRB 88 (1958). The Respondent's $5000 out-of-state business volume is not *de minimis*, but well within the statutory standard set by the Supreme Court in *NLRB v. Fainblatt*, 306 U.S. 601, 607 (1939). See also *Marty Levitt*, 171 NLRB 739 (1968) (''We are satisfied that $1,500 is more than the trifle or matter of a few dollars which the courts have characterized as *de minimis*.'').

[3] We note that attachment B of the settlement agreement states that the Board may grant a full and customary remedy in the event of a breach of the agreement.

[4] We leave to the compliance stage of this proceeding any questions concerning the effect on backpay of the employee waivers.

[5] See *Missouri Portland Cement Co.*, 291 NLRB 1043 (1988).

suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharges of Williams and Allen and notify them in writing that this has been done and that their discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Chicago location copies of the attached notice marked ''Appendix A.''[6] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent is no longer in business, mail to employees copies of the notice as provided in the remedy section of this decision.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate you about your union activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in activities on behalf of Local 25, Service Employees International Union or AFL–CIO or any other labor organization or because of your protected or concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Mary Williams and Veneta Allen immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and we will make them whole for any loss of earnings and other benefits resulting from their discharge, plus interest.

WE WILL remove from our files any reference to the unlawful discharges of Williams and Allen and WE WILL notify them that this has been done and that their discharges will not be used against them in any way.

V & J CLEANERS CO.